TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. ~~[illegible]~~. 269.

HIGINIO ROMEU, APPELLANT,

vs.

ROBERT H. TODD.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

FILED APRIL 24, 1906.

(20,219.)

(20,219.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 717.

HIGINIO ROMEU, APPELLANT,

vs.

ROBERT H. TODD.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 27, 1906.

In the District Court of the United States for Porto Rico.

At an adjourned term of the district court of the United States of merica, within and for the district of Porto Rico, begun and held t the court rooms in the city of Mayaguez, on the fourth Monday of lovember, being the twenty-eighth day of that month, in the year f our Lord one thousand nine hundred and four, and of the Inde-endence of the United States of America the one hundred and wenty-ninth.

Present: The Honorable Chas. F. McKenna, Judge.

Among the proceedings had were the following, to wit:

In Equity.

HIGINIO ROMEU, Plaintiff,
vs.
ROBERT H. TODD, Defendant.

Bill for Injunction and to Quiet Title.

Be it remembered that heretofore, to wit, on the 22nd day of pril, 1904, came the plaintiff by his attorneys and filed in the lerk's office a bill of complaint in this cause, which said bill of omplaint is as follows, to wit:

Bill of Complaint.

n the United States District Court in and for the District of Porto Rico. In Equity.

HIGINIO ROMEU, Plaintiff,
vs.
ROBERT H. TODD, Defendant,

Higinio Romeu, a citizen of Porto Rico, resident of Mayaguez, . R., brings this his bill against Robert H. Todd, a citizen of the nited States, residing in San Juan, P. R.

I. And your orator complains and says: That Robert H. Todd obtained a judgment in the U. S. Provisional Court on April 2, 1900, for the sum of $2,946.05 against Pedro and uan Agostini, and that the same was duly executed and returned *nulla bona.*" And that the said Robert H. Todd, upon the 9th ay of December, 1901, filed a creditor's bill upon the equity side of his Court against Pedro Agostini, Juan Agostini and Ana Merle subject certain property held in the name of Ana Merle for the se and benefit of Pedro Agostini; all of which will more fully appear y copies of said suit, which are on file in this Court, and reference which is hereby prayed for all necessary purposes, without the ecessity of attaching same to this bill as exhibits.

II. Your orator further represents, that among the several properties so held by Ana Merle, there was one consisting of a rural tract of land comprising 21 cuerdas, equivalent to 8 hectareas, 25 areas and 39 centiareas, located in the ward of "Ceballos," municipal district of Mayaguez, having a wooden dwelling house; bounded in the North, South, East and West by lands formerly belonging to Mrs. Isabel Valentina Merle.

III. Your orator further represents that upon the 18th day of December, 1903, your Honor decreed that the aforesaid parcel of lands, specifi-ally described, was purchased by Ana Merle with funds belonging to Pedro Agostini, and that said Pedro Agostini was the owner of the equitable and beneficial title of same.

IV. Your orator further represents unto your Honor that by the aforesaid decree of the 18th of December, 1903, your Honor ordered that the aforesaid 21 cuerdas, with all the improvements thereon, be sold at public auction on the 30th of April, 1904, and by the same decree appointed William Falbe special master to make said sale.

V. Your orator, Higinio Romeu, further represents unto your Honor, that on the 21st day of May, A. D. 1903, your orator
3 purchased from Ana Merle the aforesaid twenty-one cuerdas of land, after duly employing counsel to examine the title of same, for the sum of one thousand two hundred dollars, and that before the said purchase said counsel reported to your orator that Ana Merle had a good and sufficient title to said land, without any liens of any kind whatsoever. A copy of said deed is herewith attached marked Exhibit "A," and made a part of this your orator's bill of complaint.

VI. Your orator further represents unto your Honor, that he had no notice, actual or constructive, of the aforesaid suit of Robert H. Todd *vs.* Juan Agostini, Pedro Agostini and Ana Merle, and that your orator purchased the said property for the sum of $1,200 in cash, and that said money was paid at the time of the making of the deed of conveyance; and your orator further states that he is a *bona fide* purchaser for the value of $1,200 of the said property.

VII. Your orator further represents unto your Honor, that at the time of purchasing said property, the same was an abandoned estate, that the house was rapidly falling to decay, and that the lands were covered with a growth of brambles and brush; and that your orator immediately after purchasing the same, tore down the house upon the premises and built a new one at a cost to your orator of more than $2,000; and your orator further represents that he cleared the land and planted same in coffee, oranges and other fruit trees, at a cost largely exceeding $1,000.

VIII. Your orator further represents unto your Honor, that at the time of purchasing said property, he employed counsel, and that a careful examination was made of the records of said property, in the office of the Registrar of Deeds of Mayaguez, and that those records showed that there were no liens, charges or cautionary notices or mentions of any class whatsoever recorded against said property, and that the said Pedro Agostini, Ana Merle and Juan
4 Agostini informed your orator that the title to the said property was absolutely perfect.

IX. Your orator further represents unto your Honor that the claims of said Robert H. Todd are without any right whatever, for the reason that same were not noted in the Registry of Property, as prescribed by law; and that the said Robert H. Todd is without any estate, right, title, interest or lien whatsoever on the lands, or any portion thereof, heretofore described by your orator, as your orator is now the sole owner of the aforesaid piece of property.

X. Your orator further represents unto your Honor, that the said proposed sale, as aforesaid mentioned, is a cloud upon your orator's title to the said premises, and has the effect to greatly depreciate its value thereof, and to prevent your orator from making a sale of same.

In consideration thereof, and forasmuch as your orator has no sufficient remedy at law for the wrong done and threatened to be done, and that the remedy at law, if any, would afford no protection to your orator for the wrong threatened to be done, for the reasons hereinbefore stated, and is only relievable in a court of equity where matters of this kind are properly cognizable and reviewable.

Your orator prays the Court to grant to him your writ of subpœna directed to the said Robert H. Todd, requiring and commanding him, at a certain time and under a certain penalty therein to be limited, personally to appear before this Honorable Court, and then and there full, true, direct, and perfect answer make to all and singular the premises, and to stand, perform and abide such order, direction and decree as may be made against him in the premises, as shall seem meet and agreeable to equity.

That your Honor grant unto your orator a writ of injunction, commanding the said defendant, his agents, attorneys, servants and employees, and all other persons acting under his authority, direction or control, to absolutely desist and refrain from selling the aforesaid property or allowing the sale of same at public auction, and that your Honor declare that said Robert H. Todd, or any person claiming by or through him, are without lien or interest in the aforesaid 21 cuerdas, with the appurtenances thereunto belonging.

That said defendant be restrained from the commission of any of the acts hereby sought to be enjoined, and that upon such hearing, the writ herein prayed for pending this suit be made and confirmed until the final determination of this action, and that thereupon said injunction be made perpetual.

That upon the final hearing of this suit, your orator be confirmed in his title to the aforesaid twenty-one cuerdas, with the appurtenances thereunto belonging.

And that your orator may have such other and further relief, preliminary and final, as to the Court may seem meet and proper, and which equity may require, and for costs.

HORTON & CORNWELL,
Solicitors for Complainant.

Higinio Romeu makes oath according to law, deposes and says: That the matters and things alleged in this bill are true in points of fact.

HIGINIO ROMEU.

Subscribed and sworn to before me this 19th day of April, 1904.

MARIANO RIERA PALMER,
Notary Public.

6 *Affidavit.*

Filed April 23, 1904.

In the United States District Court in and for the District of Porto Rico. In Equity.

HIGINIO ROMEU, Plaintiff,
vs.
ROBERT H. TODD, Defendant.

I, Higinio Romeu, the above named plaintiff, make oath and say as follows:

1. That I am the owner of a certain parcel of land, to wit: A rural tract of land comprising 21 cuerdas, equivalent to 8 hectareas, 25 areas and 38 centiareas, located in the ward of "Ceballos," municipal district of Mayaguez, having a wooden dwelling house, bounded on the North, South, East and West by lands formerly belonging to Mrs. Isabel Valentina Merle.

2. Deponent further states, that he acquired the said above described property by purchase from Ana Merle, on the 21st day of May, 1903, after duly employing counsel to examine the title of same, and that before the said purchase said counsel reported to deponent that said Ana Merle had a good and sufficient title to the said land, without any liens of any kind whatsoever.

3. Deponent further states that he paid a good and valuable consideration for the said parcel of land, to wit, the sum of one thousand two hundred dollars; and that at the time of said purchase he was a *bona fide* purchaser for value and had no notice of any liens or incumbrances of any kind whatsoever existing on the said parcel of land.

7 4. Deponent further states that at the time of purchasing said property, the same was an abandoned estate, that the house therein situated was rapidly falling to decay, and that the lands were covered with brambles and brush, and that deponent immediately after purchasing said premises, tore down the house and built a new one, at a cost to this deponent of more than $2,000; and this deponent further states that he cleared the land and planted same in coffee, oranges and other fruit trees, at a cost largely exceeding $1,000.

5. Deponent further states that the counsel by him employed made a careful examination of the records of said property, in the office of the Registrar of Deeds of Mayaguez, and that those records showed that there were no liens, charges or cautionary notices or mentions of any class whatever; and further states that Pedro Agostini and Ana Merle, former owners of the land, informed him that the title to the said property was absolutely perfect.

The facts and circumstances deposed to by me in the five paragraphs of this affidavit are true and within my own personal knowledge, except as to those matters therein stated to be known on information, which I have received from counsel by me employed for that purpose, and from the said Pedro Agostini and Ana Merle, former owners of the land.

HIGINIO ROMEU.

Subscribed and sworn to before me this 19th day of April, 1904.

MARIANO RIERA PALMER,
Notary Public.

Order.

Filed April 29, 1904.

The United States District Court for Porto Rico.

HIGINIO ROMEU
vs.
ROBT. H. TODD.

8 This is a motion for a temporary injunction against the sale of a certain tract of land under decree of this Court, and which is described in the bill. The complainant has appeared by his solicitors, Horton & Cornwell, and the motion is opposed by the defendant, Robt. H. Todd, by his solicitor, N. B. K. Pettingill. Owing to the Court being in session at San Juan, it has not had opportunity to fully examine the question presented, and a temporary restraining order is therefore granted, restraining the sale of said land, which was ordered to take place on April 30, 1904, until the further order of this Court, and the defendant and Wm. Falbe, special master appointed to make said sale, will conform all action to this order.

Given under my hand this April 29, 1904.

WM. H. HOLT, *Judge.*

Demurrer.

Filed June 6, 1904.

In the United States District Court for Porto Rico.

No. 253. San Juan.

HIGINIO ROMEU
vs.
ROBERT H. TODD.

Now comes the defendant, by his solicitor N. B. K. Pettingill, and says that the bill of complaint filed in the above-entitled cause is not

sufficient in law to be answered unto and does demur thereto, and for cause of demurrer shows:

1st. That the said complain-t has not in and by his said bill made or stated such a case as entitled him to the relief prayed for therein, or to any relief in a court of equity.

2nd. That it appears from the allegations of complainant's
9 bill that the equitable doctrine of *lis pendens* is applicable to his alleged rights, and that he had in law constructive notice of the pendency of defendant's suit in equity at the time of his purchase.

Wherefore, defendant prays judgment whether he ought to be compelled further to answer complainant's said bill, and prays to be hence dismissed.

N. B. K. PETTINGILL,
Solicitor for Defendant.

I hereby certify that the foregoing demurrer is in my opinion well founded in point of law.

N. B. K. PETTINGILL,
Of Counsel for Defendant.

Decree.

June 2, 1905.

In the U. S. District Court for P. R.

HIGINIO ROMEU
vs.
ROBERT H. TODD.

Bill for Injunction.

This cause coming on to be heard upon the demurrer of the defendant to the bill of complaint, and the briefs of counsel for the respective parties having been duly considered, it is hereby ordered that said demurrer be sustained, and the complainant not desiring to plead farther by way of amendment, it is hereby further ordered and decreed that said bill of complaint be dismissed at the cost of complainant and the temporary injunction heretofore granted herein be dissolved, to which ruling complainant by his counsel excepts.

Done and decreed in open Court at Mayaguez, Porto Rico, this 2nd day of June, A. D. 1905.

CHAS. F. McKENNA, *Judge.*

10 *Opinion.*

(Filed June 5, 1905.)

No. 253. Eq.

HIGINIO ROMEU
vs.
R. H. TODD.

Complainant filed this bill to remove a cloud on his title to the real estate therein described and to restrain defendant from proceeding to sell real estate. Defendant demurs to the bill on the ground that it does not disclose a cause of action. In order to maintain this action the bill must show title in plaintiff and that defendant is setting up a cloud upon it.

From the pleadings it appears that Robert H. Todd the defendant on December 9th, 1901, filed a creditor's bill in this Court against Pedro Agostino, Juan Agostino and Ana Merle. A subpœna was awarded and properlt served and the case was duly prosecuted. On December 18th, 1903, a decree was entered by this Court in favor of Todd. On May 21, 1903, Ana Merle one of the defendants conveyed the property then in litigation to Hinino Romeu the Complainant in this bill. It is therefore admitted that the complainant purchased the land involved in this controversy from a party defendant to a proceeding in equity then pending in this Court. His purpose in filing the bill is to remove a cloud on the title so purchased by him arising from the final decree of this Court in that litigation against his vendor and to restrain the execution of that decree.

As this is a proceeding on the equity side of the Court it is governed by the principles of equity followed by the Federal Courts as distinguished from suits at law where local statutes are adopted. As local laws have no binding force upon the United States Courts in matters of procedure in equity and maritime law, the laws of Porto Rico relating to filing of notice of *lis pendens* have therefore
no application in this case and the sufficiency of this bill
11 must be determined by the rules and principles followed in
like proceedings in the Courts of the United States—Stewart *vs.* Wheeling & Lake Erie R. R. Co. 29 L. R. A. 438. Complainant's title being derived from a party to litigation pending at the time of his purchase what effect had the ultimate result of that litigation on his title. If he was affected with notice of the proceedings pending at that time it follows that he is not entitled to maintain his bill in this case. Chancellor Kent in Murray *vs.* Ballou 1 Johns. 566 said "a pending suit in equity duly prosecuted and not collusive is notice to a purchaser of the property in dispute from a party to the litigation so as to affect and bind his interest by the decrss and *lis pendens* begins from the service of the subpœna after the bill is filed." "It is a settled principle that the purchaser of property in

litgation *pendente lite* is bound by the judgment or decree in the suit; and the rule is said to be founded upon great public policy—for otherwise alienations made during a suit might defeat its whole purpose and there would be no end to litigation." 1st Story Equity Jur. Sect. 405-406. Inter State Com. *vs.* Western New York & P. R. R. Federal Reporter Vol. 82 page 192. Clearly then as the complainant purchased this property then in dispute from a party to the litigation long after the filing of the bill and services of subpœna it is therefore bound by the decree in that case. A pending suit in equity operates as constructive notice to the world and a purchaser *pendente lite* is bound by the final result of the litigation.

The decree of December 18th, 1903, has established that complainant's vendor held the land as trustee subject to the lien of this defendant and complainant took no better title than his vendor but whatever title passed to complainant from Ana Merle was subject to the lien of the claim of defendant in this bill.

It is apparent that the facts set forth in complainant's bill do not show a title or incumbrance apparently valid but in fact invalid as is necessary to constitute such a cloud as entitles a party to
12 relief in equity but on the contrary the admitted facts show a perfectly valid incumbrance which we are without power to disturb and therefore this bill does not present a sufficient cause of action. If the bill cannot be maintained to remove the cloud neither can the defendant be restrained from proceeding with the sale of the land in dispute. No appeal having been taken the decree of this Court has long since become final and conclusive and defendant can proceed by appropriate writ of execution. Lacassagne *vs.* Chapius 144 U. S. 125.

We are of the opinion that the bill filed in this case does not disclose a cause of action and the demurrer is therefore sustained and bill dismissed at cost of complainant.

(Signed) CHAS. F. McKENNA, *Judge.*

K.

13 *Petition for Appeal to the Supreme Court of the United States.*

Filed June 10, 1905.

In the District Court of the United States in and for the District of Porto Rico.

HIGINIO ROMEU, Complainant,
vs.
ROBERT H. TODD, Defendant.

The above-named complainant, conceiving himself aggrieved by the decree made and entered on the 2nd day of June, 1905, sustaining the demurrer interposed by the defendant to the complainant's bill of complaint, in the above-entitled cause, does hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors which is filed

herewith, and prays that this appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this second day of June, A. D. 1905.

F. L. CORNWELL,
Solicitor for Complainant.

The foregoing claim of appeal is allowed.

CHAS. F. McKENNA, *Judge.*

14 *Affidavit.*

Filed June 10, 1905.

In the District Court of the United States in and for the District of Porto Rico.

HIGINIO ROMEU, Complainant,
vs.
ROBERT H. TODD, Defendant.

Higinio Romeu, being duly sworn, and under oath deposes and says: That he is the complainant in the above suit, which suit is brought to remove a cloud from the title and also to restrain the defendant, his agent, attorneys, servants and employees, and all other persons acting under his authority, direction or control from selling the following property: A rural tract of land comprising twenty-one cuerdas, equivalent to eight hectareas, twenty-five areas and thirty-nine centiareas, located in the ward of "Ceballos," municipal district of Mayaguez, bounded on the North, South, East and West by lands formerly belonging to Mrs. Isabel Valentina Merle, improved with a two-story wooden dwelling and planted in coffee, oranges and other fruit trees. That the value of the aforesaid property exceeds the sum of five thousand dollars ($5,000), exclusive of the costs of this suit.

HIGINIO ROMEU.

Subscribed and sworn to before me this 6th day of June, 1905.

FERNANDO VÁSQUEZ,
Notary Public.

15 *Assignment of Errors.*

Filed June 10, 1905.

In the District Court of the United States in and for the District of Porto Rico.

HIGINIO ROMEU, Complainant,
vs.
ROBERT H. TODD, Defendant.

Complainant prays an appeal from the final decree of this Court, sustaining the demurrer of the defendant to the complainant's bill of complainant, to the Supreme Court of the United States, and assigns for error:

First. That the Court erred in sustaining the demurrer to the bill and dismissing the bill.

Second. That the Court erred in dismissing the temporary injunction.

Third. That the Court erred in sustaining the demurrer, in that the order or decree of the Court is in direct contravention to the laws of Porto Rico, articles 433, 434, 435, 436, 446, 448 and 1295, Civil Code of Porto Rico, which was in effect at that time, and articles 2, 23, 34, 42, 43, 69, 281 and 283 of the Mortgage Law of Porto Rico, and articles 91 and 126 of the Execution of the Mortgage Law of Porto Rico, which provide generally that the pendency of a suit does not constitute a lien on the property unless a notice of *lis pendens* is filed with the Registrar of Property in the district in which the property is located.

Fourth. That the Court erred in sustaining the demurrer, in that the order or decree of the Court is in direct contravention to section 8 of the Organic Act of Porto Rico, an Act entitled "An Act
16 temporarily to provide revenue and civil government for Porto Rico, and for other purposes," passed by the Congress of the United States and approved April 12, 1900, providing that the laws of Porto Rico then in force shall continue in full force and effect in so far as they are not inconsistent or in conflict with the statutory laws of the United States not locally inapplicable.

Fifth. That the Court erred in sustaining the demurrer, in that the order or decree is in direct contravention of the laws of the United States.

F. L. CORNWELL,
Solicitor for Complainant.

17 *Entry on Journal.*

(June 10, 1905.)

No. 253. Eq.

HIGINIO ROMEU
vs.
ROBT. H. TODD.

Now comes the complainant by his solicitor, F. L. Cornwell, and files a petition for appeal, which is allowed. The said complainant also files an assignment of errors and a bond for costs on appeal, which said bond is approved and filed.

18 *Bond.*

(Filed June 10, 1905.)

No. 253. Eq.

HIGINIO ROMEU, Complainant,
vs.
ROBERT H. TODD, Defendant.

Know all men by these presents, that we, Higinio Romeu as principal, and Felipe B. Rodriguez and Manuel Montalvo Colberg, as sureties, are held and firmly bound unto the defendant, Robert H. Todd, in the full and just sum of Two thousand and five hundred dollars, ($2,500), to be paid to the said defendant Robert H. Todd, his certain attorneys, executors, administrators or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and date- this 5th day of June, in the year of our Lord one thousand nine hundred and five.

Whereas, lately at the District Court of the United States in and for the District of Porto Rico, in a suit pending in said Court, between Higinio Romeu complainant and Robert H. Todd, defendant, a decree was rendered against the said Higinio Romeu, sustaining the demurrer filed by the defendant to the bill of complaint, and the said Higinio Romeu, having obtained an appeal and filed a copy thereof in the Clerk's office of the said Court to reverse the decree in the aforesaid suit and a citation directed to the said Robert H. Todd, citing and admonishing him to be and appear at a session of the Supreme Court of the United States to be holden at the city of Washington, D. C. on the — day of ——, 1905.

19 Now the condition of the above obligation is such, that if the said Higinio Romeu shall prosecute his appeal to effect, and answer all damages and costs if he fail to make the said plea good, then the above obligation to be void; else to remain in full force and effect.

HIGINIO ROMEU. [SEAL.]
MANUEL MONTALVO COLBERG. [SEAL.]
F. B. RODRIGUEZ. [SEAL.]

Sealed and delivered in presence of
MANUEL A. CARTO.
FRANCISCO R. MARTINEZ.

ISLAND OF PORTO RICO, *City of Mayaguez, ss:*

Felipe B. Rodriguez and Manuel Montalvo Colberg, sureties named in the foregoing bond, being first duly sworn, each for himself says: That he is a resident and freeholder in the Island of Porto Rico and is worth the sum of Twenty five hundred dollars, over and above all his just debts and liabilities, exclusive of property exempt from execution.

MANUEL MONTALVO COLBERG.
F. B. RODRIGUEZ.

Subscribe- and sworn to before me this 6th day of June, 1905.

FERNANDO VASQUEZ,
[SEAL.] *Notary Public.*

The foregoing bond is approved this 10th day of June, 1905.

CHAS. F. McKENNA,
Judge U. S. District Court for Porto Rico.

K.

Copy.

20 In the District Court of the United States for Porto Rico.

253. Equity.

HIGINIO ROMEU
v.
ROBERT H. TODD.

I, H. H. Scoville, Clerk of the District Court of the United States for Porto Rico, do hereby certify the foregoing nineteen typewritten pages, numbered from 1 to 19 inclusively, to be a true and correct copy of the record and proceedings in the above and therein entitled cause as the same remains of record and on file in the office of the clerk of said Court.

In Testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this 20th day of March, A. D. 1906.

[Seal United States District Court for the District of Porto Rico.]

H. H. SCOVILLE,
Clerk of the District Court of the United States for Porto Rico.

Endorsed on cover: File No. 20,219. Porto Rico D. C. U. S. Term No. 717. Higinio Romeu, appellant, *vs.* Robert H. Todd. Filed April 24th, 1906. File No. 20,219.